

## **REMARKS**

Claims 1-12 and 22 are currently pending in this application. Applicant is amending herewith Claims 1 and 8. Applicant submits that support for these amendments can be found generally throughout the specification. Applicant submits that the foregoing amendments do not add new matter. Furthermore, the amendments place the claims in better condition for appeal, since they overcome the Section 112 rejection, and, therefore, the amendments should be entered. Following entry of these amendments, Claims 1-12 and 22 will be pending and subject to further examination. Since this response is being filed within 2 months of the Final Office Action, applicant submits that he is entitled to an Advisory Office Action.

### **The Office Action**

Claims 1-12 and 22 were rejected under 35 U.S.C. § 112, second paragraph, as failing to particularly point out and distinctly claim the subject matter that applicant regards as the invention. Claims 2-12 and 22 were rejected under 35 U.S.C. § 112, second paragraph, due to their dependency on rejected Claim 1. Claims 1-4, 7-11 and 22 were rejected under 35 U.S.C. § 103(a) as being obvious and unpatentable over Bristol et al. (U.S. Patent No. 4,834,502) in view of Ferrar et al. (U.S. Patent No. 5,578,370). Claims 5, 6 and 12 were rejected under 35 U.S.C. § 103(a) as being obvious and unpatentable over Bristol et al. in view of Ferrar et al. and further in view of Higgs (GB 2 289 520 A). Applicant respectfully traverses the foregoing rejections.

**The Rejection Under 35 U.S.C. § 112**

Claims 1-12 and 22 were rejection under 35 U.S.C. § 112, second paragraph, as failing to particularly point out and distinctly claim the subject matter that applicant regards as the invention. The rejection states that the phrase “upper and lower planar layers each have the construction to prevent distortion of the tile during moulding” in Claim 1 is unclear. The rejection states that it is unclear from the specification and drawings what is meant by the term “same construction.” The rejection asks whether “same construction” means the same thickness, dimensions or the same material. The rejection further asks if “same construction” means the same material, then Claims 8 and 9 are unclear. Claims 2, 5-8, 10-12 and 22 were rejected under 35 U.S.C. § 112, second paragraph, due to their dependency on rejected Claim 1.

Applicant is amending Claim 1 herewith to more clearly state that the upper and lower planar layers are constructed from the same material. Applicant is also amending Claim 8 herewith to state that the planar layers include laminae made from material selected from plastics material, paper or cardboard. Since Claims 8 and 9 ultimately depend on Claim 1 which states that the planar layers are constructed from the same material, Claims 8 and 9 are not unclear.

Applicant submits that the claims, as amended, overcome the present rejection. Accordingly, it is respectfully requested that the rejection of Claims 1-12 and 22 under 35 U.S.C. § 112, second paragraph, be withdrawn

**The Rejection Under 35 U.S.C. § 103**

Claims 1-4, 7-11 and 22 were rejected under 35 U.S.C. § 103(a) as being obvious and unpatentable over Bristol et al. in view of Ferrar et al. Applicant respectfully traverses this rejection.

As amended, Claim 1 now recites that the upper and lower layers are constructed from the same material. This feature is not shown nor suggested in Bristol et al. In Bristol et al., the described mat comprises a core sheet 14 made from a black vinyl compound. The upper surface of the mat is defined by a sheet 12 of polycarbonate material while the lower surface is defined by a sheet 16 made from either a mixture of cork and rubber or a foam neoprene material. It is readily apparent that polycarbonate is not the same material as a cork rubber mixture or a foam neoprene material. Polycarbonate is a substantially rigid material; whereas, the mixture of rubber and cork and foam neoprene are readily flexible. Accordingly, the use of these different materials on opposing sides of the black vinyl compound would not provide the functional benefit of the present invention. As presently amended, Claim 1 requires that the upper and lower planar layers are constructed from the same material to prevent distortion of the tile during the moulding thereof. This feature is not disclosed or suggested by Bristol et al.

The patent to Ferrar et al. discloses a thermoplastic composite material. The rejection states on page 4 thereof that “Ferrar et al. teach a plastics material of oriented polypropylene, the upper and lower planar layers having the same construction to prevent distortion of the tile....” This statement is incorrect as Ferrar et al. does not refer to a tile, nor are the upper and lower layers at any point described as preventing distortion of a tile.

Ferrar et al. discloses the preparation of its material as follows:

A fabric suitable for use as the primary backing of a tufted carpet is formed from a film of mono-axially oriented polyolefin polymer such as polypropylene. The film is formed by extrusion and stretched along a single axis. The polypropylene film has a softening range of around 165.degree. C. The preformed polypropylene film is then coated on both sides thereof with a surface layer of a polymeric material such as an ethylene-propylene co-polymer which has a softening range lower than that of the polypropylene core, for example of the order of 100° C.-110° C. On the application of heat at a temperature sufficient to soften the surface layers but not the polypropylene, molecular interspersion takes place at the contiguous boundaries between the polypropylene and its surface layers which serves to protect the polypropylene against breakage during subsequent drawing operations.

After cooling, the composite film is then slit to form a plurality of separate elongate elements in the form of tapes, each tape consisting of a central polypropylene base or core having bonded thereto on each face thereof a surface layer of the ethylene-propylene co-polymer having a lower softening temperature than that of the polypropylene. The tape thus formed is then drawn at a draw ratio of the order of 20:1 in order to effect molecular orientation of the polypropylene and consequently increase correspondingly the strength of the polypropylene component of the tape and therefore the tape itself. During drawing, the molten co-polymer surface layers permit this degree of consistent drawing to an extent which is greater than that which would be permitted if, for example, polyethylene was used as a surface layer. The tape is then woven in known manner to form a fabric or mat suitable for use as a primary backing of a tufted carpet. The warp and weft tapes may be fibrillated to ease needle penetration.

Once the primary backing has been woven, the backing is passed to a tufting machine for insertion of the carpet tufts, again in accordance with known practice. The tufted primary backing is then passed to a heating station where heat is applied at a temperature sufficient to soften the co-polymer surface layers of the primary backing so that, at the inter-sections of the warp and weft tapes, the tapes become fused together. The selected temperature is less than 165° C. so that it is below the softening temperature of the polypropylene core in order that little loss of orientation or strength occurs in the core. After

cooling, the woven tapes of the primary backing are integrated by fusion. The sheet thus formed provides a primary backing with excellent dimensional strength and stability and is also one which does not fray at the edges if cut. Fusing of the adjacent tapes together also tends to lock the individual tufts of the carpet into the primary backing in a manner which is more secure than with previously proposed arrangements. In addition, it has been found that a primary backing produced in accordance with the present invention can have a tensile strength considerably in excess of that of previously proposed carpet backings in which polyethylene is used as the surface layer.

Although Ferrar et al. discloses a laminated fabric, it only discloses laminated woven fabrics. It would be clear to one skilled in the art that a woven fabric would not be suitable for use in constructing a mouse pad because of the uneven nature of the surface of a woven fabric. Furthermore, the woven fabric of Ferrar et al. does not meet the present claim language of a "planar layer."

By combining Bristol et al. and Ferrar et al. in the manner suggested by the present rejection, the examiner is taking only a selected teaching of Ferrar et al. to modify the teaching of Bristol et al. instead of reading the prior art as a whole. It is only through the improper use of hindsight reconstruction that such can be done. If one is going to take the teaching of Ferrar et al. that a laminate structure can be made from multiple layers made from the same thermoplastic material, one must also take the teaching of Ferrar et al. that the layers must be of a woven fabric. However, the use of a woven fabric in the present invention would not produce the planar layers that would be suitable for use in a mouse pad. Thus, the proper combination of Bristol et al. and Ferrar et al. does not produce the presently claimed invention.

Ferrar et al. is also non-analogous prior art. Ferrar et al. discloses that its fabrics are used in applications requiring high strength in both the warp and weft direction, such as for carpets, or for applications requiring high impact strength. The problems that Ferrar is intended to overcome include fraying of conventional woven fabrics (col. 1, lines 30-31), the inflexibility of conventional fabrics (col. 1, line 43) and the tendency of conventional fabrics to deflect tufting needles (col. 1, lines 44-45). None of those features or problems are required for the making of the mouse pad of the present invention. The mouse mat of 502 of Bristol et al. does not incorporate any woven fabric component sheets, nor is it intended to be cut. The problem of frayed edges does not arise. The mat of Bristol et al. is also intended to be rigid - therefore the need to increase flexibility does not occur. Finally, the mat of Bristol et al. is not intended to receive carpet tufts, so the needle deflection problem does not arise. The skilled person would therefore not consider the teaching of Ferrar et al. to be relevant as there is no conceivable problem with the mat of Bristol et al. which the teaching of Ferrar et al. could assist in solving. One making a laminated mouse pad would not be expected to look to a patent relating to a prior art reference dealing with woven fabric for a teaching of suitable lamination materials. It is improper to combine a prior art reference with an reference that is from a non-analogous prior art. Therefore, the combination of Bristol et al. and Ferrar et al. is improper.

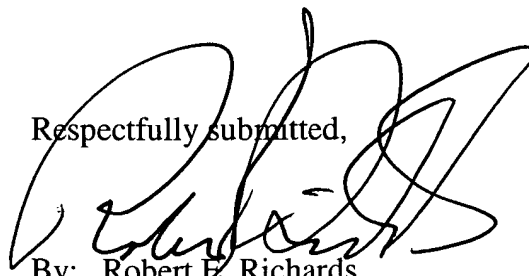
Therefore, for all the reasons stated above, the rejection of Claims 1-4, 7-11 and 22 under 35 U.S.C. § 103(a) as being obvious and unpatentable over Bristol et al. in view of Ferrar et al. is improper and should be withdrawn.

Claims 5, 6 and 12 were rejected under 35 U.S.C. § 103(a) as being obvious and unpatentable over Bristol et al. in view of Ferrar et al. and further in view of Higgs. However, Claims 5, 6 and 12 ultimately depend from Claim 1 and therefore rely for patentability on the patentability of Claim 1. Accordingly, for the reasons stated above, Applicant respectfully submit that the rejection of Claims 5, 6 and 12 under 35 U.S.C. § 103(a) as being obvious and unpatentable over Bristol et al. in view of Ferrar et al. and further in view of Higgs is improper and should be withdrawn.

### **Conclusion**

Applicant respectfully requests reconsideration of the present application in view of the foregoing amendment. Applicant submits that all claims are now in condition for allowance. Such action is courteously solicited. Applicant further request that the Examiner call the undersigned counsel if allowance of the claims can be facilitated by examiner's amendment, telephone interview or otherwise.

Respectfully submitted,



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